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SUBJECT: A STATUS REPORT ON CONSTITUTION NEGOTIATIONS IN THE WAKE OF THE ASSASSINATIONS

Classified By: Political Counselor Robert Ford.

Reasons 1.4 (B) and (D)

**¶1.** (C) SUMMARY: The assassination of two Sunni Arab constitution committee representatives added urgency to negotiations on July 19 and 20. By the end of the day, Sunni Arab delegates had made clear to the Charge that they intend to continue participating in the drafting process. Key figures on all sides of the negotiations also voiced a commitment to the August 15 deadline, but Constitution Committee Chairman Humam al-Hamudi asked Charge for help in convening an internal Iraqi political summit so that top leaders can settle core disputes. The debate over federalism continued to dominate the talks, with signs emerging that Kurdish leaders are willing to cede ownership of resources to the central government even as they push for extra provincial authorities on resource "management." Sunni Arab delegates told the Charge that they were willing to make concessions on Kurdish federalism in the north so long as they do not become a blueprint or inspiration for a new regional entity in the south.

**¶2.** (C) We see progress on the key federalism issue but still wide gaps. Boiled down, we see three major disagreements on federalism. First, the sides differ on the point in time at which provinces should be allowed to join into regions. The Shia and Kurds would allow provinces to merge right after the December 2005 elections. Sunni moderates, at least, would put this off for years. Second, they differ over how de-centralized the authorities at the provincial or regional level should be. Finally, they differ over whether the national authorities should have a say in the merger of provinces into regions even if the local populations have agreed to it.

**¶3.** (C) SUMMARY CONTINUED: SCIRI's Hamudi reviewed but did not yet pass an incomplete draft text with the Charge that showed considerable progress. Draft provisions appear to settle disputes on presidential authorities and the shape of the new government. But the draft showed controversial judgments on Iraq's Arab identity, the acknowledgement of "Persian" rights, dual citizenship, women's rights, Kirkuk, military restrictions, and the future of de-Ba'athification. END SUMMARY.

**¶4.** (C) The Embassy is now in the midst of a full-scale press on constitutional issues. Here follows a snapshot of ongoing negotiations synthesizing meetings between the Charge and Constitution Committee Chairman Humam al-Hamudi and separately with leading Sunni Arab delegates to the drafting committee. It also draws on multiple meetings by Poloffs with a host of constitution committee members.

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Sunnis Angry But On Board  
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**¶5.** (C) Sunni Arab constitution committee member and National Dialogue Council leader Salah Mutlak began July 20 threatening to suspend participation in the process but finished in a meeting with the Charge discussing the way forward. The Sunnis Arabs are angry but clearly still participating in the process. Sunni Arab Shaykh Anwar al-Nada called Poloff the evening of July 20 after the meeting with the Charge and said he had spoken with the National Dialogue Council after the meeting with the Charge and the group said it had decided to stay engaged. Ayad al-Samarrai, however, had already earlier that afternoon failed to attend a regularly scheduled press conference on the constitution drafting process. The panel of committee members thus lacked a Sunni Arab and included Chairman Humam al-Hamudi, KDP member Sa'adi Barzini, Iraqiya list member Qasim Daoud, and Sadrist Secretary Baha al-Araji. All of them spoke warmly of the slain members, described them as productive partners, and condemned the attack.

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Commitment to the Deadline,

16. (C) Key figures in the process on all sides continued to voice commitment to the August 15 deadline in multiple meetings and contexts on July 19 and 20. Constitution Committee Chairman Hamam al-Hamudi announced at the July 20 press conference that the deadline would be met despite ongoing conflict over federalism and the assassinations. He said a draft would be presented to the TNA by August 1, to be followed by two weeks of discussion and necessary amendments. Hamudi said the committee has held 80 conferences on constitutional issues via regional offices so far and plans to distribute 5 million copies of the TNA-approved constitution after August 15. He said, "There will be one for every home." (See septel for detailed report on public outreach.)

17. (C) Hamudi told the Charge in private on July 19 that he could only make the deadline by holding a full one-week summit of Iraq's main political leaders. He repeatedly described the need to put them all in an "operations center" to seal the deal. Negotiations had reached the core conflicts, and none of the members of the committee had the authority to make compromises, he said. Even PUK leader Fuad Ma'asum has reversed himself after contacts with Talabani, Hamudi said. Plus, a culture that leads all sides to put forward outlandish opening demands is delaying the process of getting down to core compromises, he lamented.

18. (C) Hammudi said the first step would be bringing together key coalition leaders from the TNA for two days of meetings this week. If that fails, and Hamudi expected it would, the representation would need to be raised a notch. Hamudi said he would then need to convene Abd al-Aziz al-Hakim, Ibrahim al-Ja'afari, Jalal Talabani, Masoud Barzani, and Muhsin Abd al-Hamid. Hamudi acknowledged that pulling this crowd together would not be easy. He said Mustapha Barzani had once been asked whether he planned to go to Mecca for the Haj and responded, "Mecca can come to me." Hamudi said he believed the Sunni Arab members of the committee would feel comfortable allowing Iraqi Islamic Party President Hamid to represent them at a summit. (COMMENT: We find that doubtful and expect further Sunni Arab representation would be necessary. END COMMENT)

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#### The Shape of the Federalism Showdown

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19. (C) All sides have acknowledged that their differences on federalism are the key obstacle to completing the constitution. The key disputes and emerging compromises and red lines on federalism are breaking down as follows:

-- SIGNS OF KURDISH FLEXIBILITY AND SUNNI FEAR ON RESOURCE OWNERSHIP: Regional authorities Sub-Committee Chairman Sa'adi Barzinji, a KDP member, told PolCouns July 19 that he was comfortable with language stating resources belong to Iraq or the people of Iraq. Hamudi was equally amenable to that language in a subsequent meeting with the Charge, and both men appear to have dropped the idea of provincial ownership of resources. Barzinji is more concerned, however, about provincial authorities on resource development and exploitation. He said that allowing the federal government "ownership" should not be a step to putting all oil exploitation under government direction, a socialist move that would stifle development. Regional entities ought to be able to make judgments on business ventures within their boundaries. The Sunni Arab delegates warned the Charge that regional resource ownership would mean "civil war" and trigger a resource scramble in Iraq that could lead Anbaris to dam the Euphrates while others block the Tigris. They also complained that the Kurdish drive for resource ownership is not matched with a willingness to assume any debt burden. They called for a clearer accounting of all of Iraq's sources of revenue -- be they natural resources, taxes, or tourism.

-- SUNNIS CALL SOUTHERN REGIONAL ENTITIES PREMATURE: Multiple Sunni Arab delegates made clear in their meeting with the Charge that a southern regional entity would inevitably fall under Iranian sway and potentially conduct ethnic cleansing. Such entities, they said, could not be permitted to arise. Iraqi Islamic Party leader Ayad al-Samarrai made clear that his principal objection to southern federalism was the

"timing," particularly given the weakness of the central government and high ethnic tensions. He said, "It's OK for the future, but not now." Samarrai said he felt that the provinces were still not mature enough politically to be entrusted with such authorities. Political immaturity has put them under the sway of religious parties and liable to sectarian extremism. Making a similar but more colorful point on the need for a gradual approach to federalism, Sunni Arab committee member Mahmud Mashhadani said, "Federalism is like a pregnant woman trying to give birth to a baby prematurely. If she does so she could die with the baby."

-- SUNNIS PREPARED FOR A SPECIAL KURDISH CASE: The Sunni Arab delegates made clear to the Charge that they were prepared to offer the Kurds significantly expanded authorities in the north, but they took pains to ensure that this be considered an exception, not a model for the rest of Iraq. Mutlak said the Kurds needed to be reined in lest they achieve so much that they inspire irredentism in the south. After all, he and others observed, the Shia, with mass graves and a history of suppression, see their story as analogous to that of the Kurds. The Kurds, Mutlak said, are currently making excessive demands on military rights, and the right to pursue foreign treaties that he said were over the top. Mutlak warned that Basra-based Shia Constitution Committee member Wael Abd al-Latif, an ardent federalism proponent, had already threatened, "Whatever the Kurds get, we want." (Comment: This extends well beyond Wael Abd al-Latif. Sami al-Askari, an ambitious Sadr trend parliamentarian on the committee told PolCouns on July 19 that the Shia must get the same regional authorities that the Kurds get. End Comment.) Mashhadani later pointed out that the Kurds want full say over their own affairs along with wide influence in the central government, an arrangement that doubles their appropriate representation. The current health minister in Baghdad has less authority nationally than the Kurdish health minister in the Kurdistan, he alleged.

-- FRAMEWORK FOR FUTURE ENTITY FORMATION: Hamudi indicated to the Charge that the constitution would allow governorates to merge with the approval of their respective populations or provincial councils. He said the central government and national assembly would not have any authority to limit this process. Samarrai made clear separately to the Charge that he thought such a framework was far too liberal and that the right offered to the provinces would be far too absolute given the impact their decisions would have on Iraq as a whole.

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Other Ongoing Constitutional Controversies

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¶10. (C) Several other ongoing constitutional controversies continue to generate heat, although none at the level of the federalism debate. They break down as follows:

-- IRAQ'S ARAB IDENTITY: Hamudi told the Charge that Sunni Arab delegates are still insisting that all of Iraq, not merely its Arab majority, be cited as part of the "Arab ummah," a provision that marginalizes Kurds unacceptably.

-- ACKNOWLEDGING "PERSIAN" IRAQIS AND OFFICIALIZING SHIA ISLAM: The committee's minority rights advocates may have achieved too much success in their efforts to ensure that all of Iraq's minorities are listed by name. A current draft goes so far as to list "Persians" as one protected part of the Iraqi mosaic. Sunni Arabs told the Charge that they see this provision as nothing less than a legitimization of the very community they see as a fifth column. Sunni hard-liner Khalaf Al-Ayan told us he rejected altogether the legitimization of "Persians" as Iraqi citizens when such people were clearly Iranian infiltrators. Iraqi Islamic Party leader Ayad al-Samarai also claimed to the Charge that the Shia were seeking to enshrine the "marja'iya" in the constitution as a "guiding force" and outline administration of key holy sites. (COMMENT: We have seen no evidence that Samarrai's claims have a basis in the text. END COMMENT).

-- DUAL CITIZENSHIP: Hamudi told the Charge that he expected the constitution to allow dual citizenship but require candidates for senior government positions to relinquish all but their Iraqi citizenship. The

Sunni Arab delegates said they objected to the concept of dual-citizenship because they believed it would lead to a plethora of Iranian citizens in Iraq.

-- WOMEN'S RIGHTS: Hamudi downplayed concerns raised on women's rights provisions in the document in his meeting with the Charge. He acknowledged that the document bounded rights by the Sharia but said that it also guaranteed equal rights for all Iraqis irrespective of their gender. He said he was ready to make that provision even clearer if need be. When one journalist during the July 20 press conference asked whether the document would limit women's legal rights and ability to represent themselves on personal status issues, Hamudi said the document never addressed that issue beyond guaranteeing equal rights for all Iraqis. He said he did not consider the rest be a constitutional issue. (See septel on women's rights questions in the emerging - but hardly final - text.)

-- THE PRESIDENT'S AUTHORITIES: Hamudi said that the powers now allotted to the presidency council would be concentrated in the president alone under the new constitution. The country may still have two vice presidents, but they would not share the president's authorities.

-- CARRYING OVER ARTICLE 58: Hamudi said he intends for the constitution to carry over the compromise formula on Kirkuk outlined in Article 58, potentially by simply restating the provision. One Sunni Arab delegate, expert consultant Hassan Zaydan, denounced the entire TAL as illegitimate in the meeting with the Charge and appeared unprepared to accept the carry-over of any TAL provision.

-- RESTRICTIONS ON MILITARY ACTIVITY: Hamudi told the Charge that the constitution would put the Iraqi military firmly under civilian control, but he acknowledged an ongoing debate with Kurds seeking further limits on the force. The Kurds want regional entities to control the entry or exit of national forces from their borders. Samarrai warned that the Kurds want to pass language that gives special privileges to "militias that fought the former regime," which he said was a by-word for the Pesh Merga and Badr Corps. He said that scores of militia members have already infiltrated the Iraqi armed forces. He questioned how the U.S. could watch that take place without allowing the Sunnis to form their own militia force.

-- THE RIGHT OF SECESSION: KDPer Barzinji was still clearly peddling more expansive version of Kurdish rights than his colleagues during the constitution committee's July 20 the press conference. When a reporter asked if any regional entities would have the right to secede, Barzinji said that the Kurds would be able to request such a thing. He offered though that the first two elections, which he expected to come over 8 years, would tell the tale of the constitution's effectiveness for all Iraqis.

-- STYLE OF THE NEXT ELECTIONS: This issue is not likely to be set in the constitution, but uncertainty over it is influencing the constitution debate. Hamudi said Shia and Sunni Arab delegates and others support a multiple-district election with slots for provinces divided in accordance with food ration system population data. He acknowledged that the Kurds are uncertain over this idea because they think it will depress their representation. He claimed that Masoud Barzani had given him private assurances that he was interested in multiple-district elections. Meanwhile, Sunni Arab delegates told the Charge that they will not feel comfortable with the next elections unless the "politicized" IECI is replaced or overhauled.

-- THE FUTURE OF DE-BA'ATHIFICATION: Hamudi was still working out the wording of the future mandate of the de-Ba'athification commission, but he confirmed that the new constitution would include a wide ban on the Ba'ath Party, "Ba'athist thought," and any sectarian, chauvinistic groups. Mutlak warned the Charge that he did not even consider the issue of the Ba'ath Party to be an appropriate subject for treatment in the constitution.

-- OTHER OUTSTANDING POINTS: Hamudi said he was still putting together a unified draft on the role of Iraq's special tribunal and needed to determine provisions on amending the constitution.

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COMMENT: Refereeing the Debate

¶11. (C) Charge is traveling to Irbil July 21 to push for the summit Hamudi says he needs to produce a final compact. We will keep pushing all sides to stay in the negotiating room and make their complaints and proposals specific as we approach the wire. All sides realize that Kurdish rights will have to be expansive, and all sides realize that drawing a new internal map is more than they are currently capable of. What remains is determining the framework for the future and the interim authorities for the present. We have heard the Sunnis speak openly of decentralization. They will not go so far as to speak of "political authority" in non-Kurdish areas. We see progress, therefore, but still wide gaps. Boiled down, we see three major issues on federalism. First, the point in time at which provinces should be allowed to join into regions. Hamudi (and the Kurds) would allow provinces to merge right after the December 2005 elections. The Sunni moderates, at least, would put this off for years. Second, they differ over how de-centralized the authorities at the provincial or regional level should be. Finally, they differ over whether the national authorities should have a say in the merger of provinces into regions even if the local populations have agreed to it. (The Shia and Kurds want no national authority intervention; the Sunnis when they countenance federalism insist on this condition.)

¶12. (C) Keeping the Sunnis on board will require close attention to several issues, from the mundane to the profound:

-- WATCHING THAT SECURITY PACKAGES ARE PROVIDED: TNA Speaker Hachim al-Hasani agreed July 20 to offer a security package to the Sunni Arab members as a step toward keeping them on board. We have to push him to come through on this immediately, especially since Mutlak is convinced that there is an Iranian intelligence plan to liquidate all Sunni Arab constitution committee delegates. We are also working to make sure that all new Sunni Arab members are quickly badged and facilitated in exit and entry to the International Zone, particularly as the assassinated members are replaced.

-- ENSURING AN INVESTIGATION TAKES PLACE: The Sunnis need to see the Iraqi government investigate this assassination, if only to prove the government was not complicit. Mutlak claims that he previously submitted a report and request for the Iraqi government to investigate the threats to these members and the request was unanswered. All of the Sunni Arab delegates are convinced that government counter-terrorism efforts are a mask for an anti-Sunni campaign. An investigation will not end the paranoia, but it will apply a salve.

-- SENDING A MESSAGE OF U.S. ENGAGEMENT: More than anything else, the Sunni Arab delegates made it clear that U.S. engagement was a key condition of their engagement. They urged a firm U.S. hand to keep all the parties to the deadline and away from extremist proposals on federalism that would threaten Iraq's unity.

¶13. (U) REO HILLA, REO BASRA, REO MOSUL, and REO KIRKUK, minimize considered.

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